

#### **7.14 (17A,455A) Hearing procedures.**

7.14(1) *Conduct of proceedings.* A hearing shall be conducted by a presiding officer who shall:

- a. Open the record and receive appearances;
- b. Administer oaths and issue subpoenas;
- c. Enter the notice of hearing into the record;
- d. Receive testimony and exhibits presented by the parties;
- e. In the administrative law judge's discretion, interrogate witnesses;
- f. Rule on objections and motions;
- g. Close the hearing;
- h. Issue an order containing findings of fact, conclusions of law.

7.14(2) *Counsel.* Any party may be represented by counsel or other representative at the party's own expense.

7.14(3) *Appearance pro se.* If a party other than the department appears on the party's own behalf without counsel or other representative, the presiding officer shall explain to the party the rules of practice and procedure and generally conduct the hearing in a less formal manner than that used when a party is represented by counsel or other representative. It should be the purpose of the presiding officer to assist to the extent necessary any party who appears without a representative to allow the party to fairly present evidence, testimony and arguments on the issues.

7.14(4) *Attendance and participation of the public.* Every hearing before an agency of the department or an administrative law judge or appeal board shall be open to the public.

7.14(5) *Recording of hearing.*

a. Method of recording. Oral proceedings in connection with a hearing in a case shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand shall bear the costs.

b. Transcription. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Tapes. Copies of tapes of oral proceedings may be obtained from the presiding officer at the requester's expense.

d. Retention time. The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the department for at least five years from the date of the decision.

7.14(6) *Fees.* Each party bears all costs and expenses, including fees, for its own witnesses.

7.14(7) *Failure to appear.* If a party fails to appear after proper service of notice of hearing, the presiding officer may adjourn or may proceed with the hearing, and make a proposed decision in the absence of the party. Adjournment may be granted by the presiding officer on the presiding officer's own motion in the interest of justice.

7.14(8) *Evidence.*

a. Admissibility in general. Evidence that is relevant and material shall be admitted unless it is unduly repetitious. Relevant and material evidence may be admitted even though inadmissible in a jury trial. Evidence not provided to a party upon request, upon issuance of a subpoena, through discovery, prehearing procedures, or during informal procedures shall not be admissible by the party who failed to provide the evidence at the hearing unless it is necessary to avoid a manifest injustice.

b. Privilege. The rules of privilege recognized by law shall be given effect.

c. Objections. If a party objects to admission or

rejection of any evidence or the limitation of the scope of any examination or cross-examination, the party shall state briefly the grounds for the objections. The objection, the ruling on it, and the reasons for the ruling shall be noted in the record.

d. Offer of proof. Whenever evidence is deemed inadmissible, the party offering the evidence may make an offer of proof which shall be noted in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence excluded consists of a document or exhibits, it shall be inserted in the record. In the event that the agency decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of the evidence or, where appropriate, the agency may evaluate the evidence and proceed to a final decision.

e. Verification. Subject to subrule 7.14(8), paragraphs "a" to "d," when a hearing will be expedited, and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified form. With the approval of the presiding officer, a witness may insert into the record, as testimony, statements of fact or opinion prepared by the witness or written answers to interrogatories, or may submit as an exhibit the prepared statement of the witness provided that the statements or answers must not include legal arguments. Before any statement or answer is read or admitted into evidence, the witness shall deliver to the presiding officer and opposing party a copy of it. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced in the usual manner and the witness shall be subject to oral cross-examination on the contents of the statements. Approval for this procedure may be denied when it appears to the presiding officer that the memory or demeanor of the witness is of importance.

f. Documentary evidence. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

g. Examination and cross-examination. Witnesses at the hearing shall be examined orally, under oath. Witnesses at the hearing, or persons whose testimony has been submitted in written form, shall be subject to cross-examination by any parties as necessary for a full and true disclosure of facts. The presiding officer may limit the examination or cross-examination or both when necessary for orderly presentation of evidence.

h. Official notice. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed, and their source, including any staff memoranda or data. The parties may contest these facts before decision is announced.

i. Evaluation of evidence. The agency's experience, technical competence, and specialized knowledge may be utilized in evaluating the evidence.

7.14(9) *Conduct at hearings.* All persons shall conduct themselves in a courteous and dignified manner. Attorney's conduct is subject to the requirements of Disciplinary Rule DR 7-106 and Ethical Considerations EC 7-19 to EC 7-39. Contemptuous conduct is grounds for removal from the hearings.

Description: EPA approved a new chapter "Rules of Practice in Contested Cases." This chapter governs procedures in contested cases generally including appeals of administrative orders, appeals of license or permit conditions, license or permit denials or suspensions. This chapter was approved in conjunction with Title V rules.

[illegible]

### Difference Between the State and EPA-Approved Regulation

None.